



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 7403-99

14 September 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 12 September 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the letter from the commanding officer who imposed nonjudicial punishment, dated 17 May 2000.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you reenlisted in the Naval Reserve on 10 April 1992 and continued to serve on active duty. Subsequently, you extended that enlistment. On 16 June 1992 you were advanced to MS1 (E-6). You served without incident until 3 May 1996, when you received nonjudicial punishment (NJP) for an unspecified period of unauthorized absence, dereliction of duty, disobedience and insubordination. The punishment imposed included forfeitures of pay and a suspended reduction in rate to MS2 (E-5).

On 10 July 1998 you received another NJP for insubordination and communicating a threat to a superior petty officer. The punishment imposed included forfeitures of pay totaling \$1097 and a reduction in rate to MS2. You appealed the NJP claiming the punishment was too severe because it would result in your transfer to the Fleet Reserve in the grade of MS2 and not MS1. You noted that the reduction would cost you in excess of \$68,000 over your lifetime. The commanding officer stated in his endorsement on the NJP appeal, in part, as follows:

... (He) has a history of displaying disrespect for senior petty officer and a problems with his

uncontrollable temper. In addition (he) has been in the Navy for 18 years and 11 months, and has been to mast on many occasions for similar incidents. As recently as two years ago he went to mast for several infractions involving disrespect and pledged to change his behavior.

... As a senior first class petty officer, (he) should be very familiar with the Navy's Policy on Equal Opportunity and the Navy Rights and Responsibility Program. His claim that he wasn't aware that calling an African American male a "boy" was a derogatory term is hard to believe.

On 21 August 1998 your appeal was denied by the Commander, Naval Air Reserve Force. On 31 July 1999 you transferred to the Fleet Reserve in the rate of MS2.

On 17 May 2000 the commanding officer provided the NJP evidence and commented on the contentions made in your application. Concerning the severity of the punishment imposed at the NJP, the commanding officer essentially reiterated the points he made in his endorsement on your appeal of the NJP. The commanding officer also stated that your request for reinstatement to MS1 was not considered because the Navy Personnel Command refused to waive the 12 month minimum period for consideration of such requests.

After reviewing the commanding officer's letter, you submitted two letters, dated in January 1999, from members of your command who supported your request for reinstatement to MS1.

In reaching its decision, the Board believed that it was proper for the commanding officer to consider your record of similar offenses. Further, the Board believed that the nature of your offenses suggested a problem with race relations. Given the circumstances, the Board concluded that the commanding officer did not abuse his discretion when he imposed NJP in this case. Further given your record of similar offenses, the Board concluded that the punishment imposed was not too severe.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval

record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Enclosure



# DEPARTMENT OF THE NAVY

NAVAL SUPPORT ACTIVITY  
2300 GENERAL MEYER AVENUE  
NEW ORLEANS, LA 70142-5007

IN REPLY REFER TO

5800  
Code 015

17 MAY 2000

From: Commanding Officer, Naval Support Activity, New Orleans  
To: Chairman, Board for Correction of Naval Records

Subj: REQUEST FOR NONJUDICIAL PUNISHMENT DOCUMENTATION IN THE CASE OF [REDACTED]

Ref: (a) MILPERSMAN 1430-020

Encl: (1) Appeal of Nonjudicial Punishment Package dtd 21 Aug 98  
(2) Preliminary Inquiry ICO [REDACTED], Jr., USNR(TAR), dtd 22 Jun 98  
(3) Appeal of Nonjudicial Punishment Package dtd 28 Jun 96  
(4) NAVPERS 1070/613 dtd 01 Sep 98  
(5) MWR Deputy Director Memorandum of 04 Aug 98  
(6) Certificate of Completion of Training for the Anger Management Workshop ICO MS1 Sasso

1. Per your request, enclosures (1) through (5) are forwarded to assist in the review of [REDACTED] nonjudicial punishment of 10 July 1998.


2. [REDACTED] had a history of inappropriate behavior while attached to Naval Support Activity, New Orleans. He repeatedly displayed disrespect for senior petty officers. [REDACTED] had an uncontrollable and explosive temper that was not softened by command mandated attendance at an Anger Management Workshop. At the time of the incident in question, [REDACTED] had been in the Navy for nearly 19 years. During those 19 years, [REDACTED] had been to nonjudicial punishment on several occasions for similar incidents. In fact, just two years prior to 10 July 1998, [REDACTED] had been punished at a nonjudicial punishment proceeding for various incidents including disrespect and pledged to improve his behavior. As evidenced by the incident leading to the 10 July 1998 nonjudicial punishment proceeding, [REDACTED] did not learn his lesson.

3. In his letter to Senator John Breaux, [REDACTED] claimed that he went to nonjudicial punishment on 10 July 1998 for exchanging words with a fellow first class petty officer. This statement is misleading. [REDACTED] was punished at nonjudicial punishment on 10 July 1998 for telling a fellow first class petty officer "You better shut your mouth boy before I make you shut it.", as well as "I'm not going to talk to this fucking boy." At the time of these statements, [REDACTED] should have been well aware of the Navy's policy on Equal Opportunity and the Navy's Rights and Responsibilities Program. [REDACTED] however, claimed that he did not realize that calling an African-American male a "boy" was derogatory or that in his comments he had made a threat. Based on the evidence, the nature of the language, and his years of experience, [REDACTED] statement of denial was unbelievable.

4. [REDACTED] also complained in his letter to Senator John Breaux, that his request for reinstatement in rate was not adequately considered by this command. In early 1999, [REDACTED] requested information on reinstatement following his reduction in rate at the nonjudicial punishment proceeding held on 10 July 1998. [REDACTED] was referred to reference (a) which states that a

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Subj: REQUEST FOR NONJUDICIAL PUNISHMENT DOCUMENTATION IN THE CASE OF MS1  


"window of a minimum of 12 months and a maximum of 36 months from the date of reduction-in-rate will be used for submission of requests."   
indicated a desire to file his reinstatement request earlier because of his pending terminal leave and ultimate retirement in July 1999. This command contacted the appropriate authorities at the Bureau of Naval Personnel (BUPERS) on 18 February 1999. This command was informed that BUPERS would not waive the 12-month minimum requirement prior to requesting reinstatement. This information was immediately passed to MS1 Sasso.

5. If you require any further information on this matter, my point of contact is LT J. L. Whitacre, JAGC, USNR, Staff Judge Advocate, 504/678-2624.

